



## DEPARTMENT OF THE INTERIOR

### 25 CFR Part 1000

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#### Self-Governance PROGRESS Act Negotiated Rulemaking Committee

##### Establishment; Proposed Membership

**AGENCY:** Office of the Assistant Secretary – Indian Affairs, Interior.

**ACTION:** Proposed membership of Committee, notification of intent to establish committee, and nominations.

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**SUMMARY:** The U.S. Department of the Interior (DOI) is announcing the proposed members to form the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee). The Committee will advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act) to revise the regulations on Tribal Self-Governance Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act. This document solicits comments on the proposed membership and the proposal to establish the Committee and invites additional nominations for Committee members who will adequately represent the interests that are likely to be significantly affected by the proposed rule. The Secretary also proposes to appoint Federal representatives to the Committee as listed.

**DATES:** Comments must be submitted no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments and nominations to the Designated Federal Officer, Vickie Hanvey, by any of the following methods:

- (Preferred method) Email to: [consultation@bia.gov](mailto:consultation@bia.gov);

- Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of the Assistant Secretary – Indian Affairs, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer, Ms. Vickie Hanvey, Program Policy Analyst, Office of Self-Governance, Office of the Assistant Secretary – Indian Affairs; telephone: (918) 931-0745; email: Vickie.Hanvey@bia.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 21, 2020, the PROGRESS Act was signed into law and amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 et seq., which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI’s Tribal Self-Governance Program. The PROGRESS Act calls for a negotiated rulemaking committee to be established under 5 U.S.C. 565, with membership consisting only of representatives of Federal and Tribal governments, with the Office of Self-Governance serving as the lead agency for the DOI. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of the self-governance relationship between the United States and Indian Tribes. The purpose of the Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). The Committee will use a negotiated rulemaking process to develop regulations for implementation of the PROGRESS Act to amend, delete, and add provisions to the existing regulations at 25 CFR part 1000, Annual Funding Agreements Under the Tribal Self-Government Act Amendments to the Indian Self-Determination and Education Act, which addresses Tribal Self-Governance compacts.

**II. Proposed Work of the Committee**

The objectives of the Committee are to represent the interests that will be significantly affected by the final regulations, negotiate in good faith, and reach consensus, where possible, on recommendations to the Secretary for the proposed regulations.

The Committee will be charged, consistent with subchapter IV regarding the Tribal Self-Governance Program, with developing proposed regulations to implement the PROGRESS Act's provisions regarding the DOI's Self-Governance Program. The proposed regulations will be considered by the Secretary and subject to government-to-government consultation.

The Committee will be expected to meet approximately 3 – 5 times and each meeting is expected to last multiple hours for a consecutive 2 – 3 days each. The initial meeting will be held by teleconference and/or web conference; later meetings may be held either virtually or in person. The Committee's work is expected to occur over the course of 6 – 12 months, and it is the Secretary's intent to publish the proposed rule for notice and comment by 2022 (within 18 months of the anticipated date of the Committee's establishment). However, the Committee may continue its work for up to two years. The Office of Self-Governance has dedicated resources required to: ensure the Committee is able to conduct meetings, provide technical assistance, and provide any additional support required to fulfill the Committee's responsibilities.

### **III. Proposed Tribal Committee Members**

On February 1, 2021, the Office of Assistant Secretary – Indian Affairs (AS-IA) published a **Federal Register** notice of intent (86 FR 7656) requesting comments and nominations for Tribal representatives for the Committee. The comment period for that notice of intent closed March 3, 2021.

Within the notice, AS-IA solicited comments on the proposal to establish the Committee, including comments on any additional interests not identified. AS-IA

solicited nominations from Indian Tribes and Tribal organizations as defined in section 4(I) of the Indian Self-Determination and Education Assistance Act that are currently participating in the Tribal Self-Governance Program and those that are not currently participating in, but are interested in participating in, the Tribal Self-Governance Program and who would be affected by the final rule. AS-IA requested that these Tribes and Tribal organizations nominate representatives to serve on the Committee.

The Secretary has selected 14 Tribal representatives (7 Primary, 7 Alternate) for the Committee and 12 Federal representatives (6 Primary, 6 Alternate) for the Committee, for a proposed total of 26 members (13 Primary, 13 Alternate). Primary representatives are voting members. Both primary and alternate representatives are expected to attend all meetings. Alternate representatives are to remain abreast of discussions and to be prepared to vote in the event the Primary is unavailable. The Designated Federal Officer (DFO) and Alternate DFO are considered non-members of the Committee. The proposed Committee was selected based upon nominations submitted through the process identified in the **Federal Register** (85 FR 7656) dated February 1, 2021, under the “Nominations” section. The Secretary did not consider nominations that were received in any other manner or were received after the deadline.

The Secretary proposes the following 14 Tribal representatives for the Committee:

<b>Proposed Committee Member</b>	<b>Affiliation</b>
W. Ron Allen, Chairman/CEO	Jamestown S’Klallam Tribe
Melanie Benjamin, Chief Executive	Mille Lacs Band of Ojibwe
Richard Peterson, President	Central Council Tlingit and Haida Indian Tribes of Alaska
Michael Dolson, Councilman	The Confederated Salish and Kootenai Tribes of the Flathead Nation
Melanie Fourkiller, Director of Self-Governance	Choctaw Nation of Oklahoma
Russel (Buster) Attebery, Chairman	Karuk Tribe
Karen Fierro, Self-Governance Director	Ak-Chin Indian Community

The Secretary proposes the following alternate Tribal representatives for the Committee:

<b>Proposed Alternate Committee Member</b>	<b>Affiliation</b>
Sandra Sampson, Board Treasurer	Confederated Tribes of the Umatilla Indian Reservation
Jennifer Webster, Councilwoman	Oneida Nation
Gerry Hope, Transportation Director, Former Tribal Leader	Sitka Tribe of Alaska
Jody LaMere, Councilwoman	Chippewa Cree Tribe of the Rocky Boy's Reservation
Jacklyn King, Secretary	Sac and Fox Nation
Will Micklin, Second Vice President	Central Council Tlingit and Haida Indian Tribes of Alaska
Annette Bryan, Council Member	Puyallup Tribe of Indians

#### **IV. Proposed Federal Committee Members**

The Designated Federal Officer for the Committee will be Ms. Vickie Hanvey, Office of Self-Governance. The Secretary proposes the following 12 Federal representatives for the Committee:

<b>Name</b>	<b>Affiliation</b>
Sharee Freeman, Director	Office of Self-Governance, Assistant Secretary – Indian Affairs
Bryan Shade, Attorney-Advisor	Branch of Self-Governance and Economic Development, Office of the Solicitor
Vicki Cook, Native American and International Affairs Office	Bureau of Reclamation
Bryon Loosle, Division Chief	National Conservation Lands, Bureau of Land and Minerals Management
Scott Aikin, National Native American Programs Coordinator	U.S. Fish and Wildlife Service Head Quarters
Rose Petoskey, Senior Counselor to the Assistant Secretary – Indian Affairs	Office of the Assistant Secretary – Indian Affairs

The Secretary proposes the following alternate Federal representatives for the Committee:

<b>Name</b>	<b>Affiliation</b>
Matt Kallappa, Northwest Field Office Manager	Office of Self-Governance, Assistant Secretary – Indian Affairs
Jody Schwarz, Attorney-Advisor	Branch of Self-Governance and Economic Development, Office of the Solicitor

Kelly Titensor, Native American Affairs Advisor	Bureau of Reclamation
C. Dave Johnson, Tribal Liaison	Bureau of Land and Minerals Management
Dorothy FireCloud, Native American Affairs Liaison	National Park Service
Samuel Kohn, Senior Counselor to the Assistant Secretary – Indian Affairs	Office of the Assistant Secretary – Indian Affairs

## V. Comments

The Secretary solicited comments on the proposal to establish the Committee and received seven written responses submitted through the process identified in the **Federal Register** (86 FR 7656) dated February 1, 2021. The Secretary did not consider comments that were received in any other manner or were received after the close of the comment period. The written comments were received from the Tribal Self-Governance Title IV Task Force and the following six Tribes: 1) Choctaw Nation of Oklahoma, 2) Central Council Tlingit and Haida Indian Tribes of Alaska, 3) Squaxin Island Tribe, 4) Jamestown S’Klallam Tribe, 5) Muscogee (Creek) Nation, and 6) Sac and Fox Nation.

*The Task Force and all Tribal commenters except one* indicated the Committee should be exempt from the Federal Advisory Committee Act (FACA) based on the following: members are either elected officials, or employees with designated authority from an elected official to act on their behalf, and so the Committee should be exempt from FACA under the intergovernmental exemption in the Unfunded Mandates Reform Act (UMRA).

**Response:** The Unfunded Mandates Reform Act (UMRA) excepts certain committees from compliance with FACA if the committee satisfies two requirements. First, meetings between Federal and Tribal governments must be held exclusively between Federal officials and elected officers of State, local, and Tribal governments (or their representatives acting in their official capacities. Second, the meetings must be solely for the purpose of exchanging views, information or advice relating to the management or

implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration. See 2 U.S.C.

154(b). The Self-Governance PROGRESS Act Negotiated Rulemaking Committee meets the first requirement but not the second. The Committee is convened to negotiate and promulgate regulations to carry out relevant provisions of the PROGRESS Act, not simply to exchange views, information, or advice on the management or implementation of federal programs. Accordingly, this Committee cannot be exempted from FACA under UMRA.

*All Tribal commenters and the Task Force* indicated support for using an independent facilitation and six specifically support using the services of the Federal Conciliation and Mediation Service (FMCS).

**Response:** Under 5 U.S.C. 565(c), DOI may nominate either a person from the Federal Government or a person from outside the Federal Government to serve as a facilitator for the negotiations of the Committee, subject to the approval of the Committee by consensus. DOI will consider the nomination of FMCS as a facilitation team.

*The Task Force and several of the Tribal commenters* indicated: 1) section IV of the notice was unclear about the nomination of primary and alternative representatives creating confusion if a Tribe should submit a primary and alternate, each region submit a primary and alternate, or each nomination should specify where it is for the primary or alternate representative; 2) the notice indicates Committee members must be able to attend all meetings but then states an alternate who can fulfill the obligations of membership should the primary be unable to attend; 3) selection of Committee members surrounds the use of the terms representation of Tribes with a geographic balance; 4) the deadline was confusing and it seemed contradictory to establish a hard deadline but then state you will accept additional nominations after the deadline passes.

**Response:** 1) A Tribe or Tribal Organization may submit either a primary or alternate representative or both. 2) Primary and alternate candidates will both be expected to attend all meetings. Primary representatives are voting members. Alternate representatives are expected to attend all meetings to remain abreast of discussions and to be prepared to vote in the event the primary is unavailable. 3) Proposed committee membership was based upon elected Tribal leadership or Tribal official, Tribal size, balanced geographical representation (by geographic region, state, or other geographical determination) 4) **Section VI. Nominations** of this document clarifies that additional nominations may be offered after proposed committee membership has been published.

**The Task Force and two Tribal commenters** indicated: 1) travel and per diem provisions were hard to decipher and, in some instances, seemed contradictory; 2) the notice is unclear with respect to who is responsible for travel expense; 3) provide travel support to all Tribal representatives without evidence of financial resources.

**Response:** The Negotiated Rulemaking Act section 568(c) states that members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the Federal Advisory Committee Act, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if:

- (1) such member certifies a lack of adequate financial resources to participate in the committee; and
- (2) the agency determines that such member's participation in the committee is necessary to assure an adequate representation of the member's interest.

The DOI will follow the statutory requirements within the Negotiated Rulemaking Act as well as the Federal Advisory Committee Act referenced above. The DOI will provide travel and per diem expenses for the Committee as funding allows.



*One Tribal commenter* requested clarification on: 1) next steps for submitting nominations on first Federal Register notice; 2) submitting nominations through a second Federal Register notice and the deadline; 3) inaugural meeting of the Committee.

**Response:** 1) Nominations submitted through the process identified in the **Federal Register** (85 FR 7656) dated February 1, 2021, under the “Nominations” section closed on March 3, 2021. 2) **Section VI Nominations** of this document allows for additional nominations to be considered for this Committee. 3) After considering comments and nominations for Tribal representatives, the DOI will publish a Federal Register Notice of Establishment and will indicate the proposed meeting schedule.

## **VI. Nominations**

If you are an Indian Tribe or Tribal organization as defined in section 4(I) of the Indian Self-Determination and Education Assistance Act that is currently participating in the Tribal Self-Governance Program or that is not currently participating in, but is interested in participating in Tribal Self-Governance Program, we invite you to comment on the proposed nominations in this document. If there is no adequate representation of those interests that will be significantly affected by a proposed rule, we invite you to nominate other persons for membership on the Committee. The Committee membership should reflect the diversity of Tribal interests, and nominees should only be of representatives and alternates who:

- Are elected officials of Tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and
- Will be able to:
  - Represent one or more of the specified interests with the authority to embody the views of that interest, communicate with interested constituents, and have a clear means to reach agreement on behalf of the interest(s);

- Coordinate, to the extent possible, with other interests who may not be represented on the Committee;
- Negotiate effectively on behalf of the interest(s) represented;
- Commit to time and effort required to attend and prepare for meetings; and
- Collaborate among diverse parties in a consensus-seeking process.

The Secretary will consider nominations for representatives only if they are nominated through the process identified in this notification of intent and in the **Federal Register** notice of intent at 86 FR 7656. The Secretary will not consider any nominations received in any other manner. The Secretary will not consider nominations for Federal representatives; only the Secretary may nominate Federal employees to the Committee.

Nominations must include the following information about each nominee:

- (1) A current letter from the governing body or chairperson of the Tribe representing one of the interest(s) identified supporting the nomination of the individual to serve as a representative for the Tribe on the Committee;
- (2) A resume reflecting the nominee's qualifications and experience, to include the nominee's name, Tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business email address, if applicable);
- (3) The interest(s) to be represented by the nominee (identified in this document) and whether the nominee will represent other interest(s) related to this rulemaking; and
- (4) A brief description of how the nominee will represent the views of the identified interest(s), communicate with constituents, and have a clear means to reach agreement on behalf of the interest(s) they are representing; and
- (5) A statement on whether the nominee is only representing one interest or whether the expectation is that the nominee represents a specific group of interests.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section.

## **VII. Public Disclosure of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire nomination submission – including your personal identifying information – may be made publicly available at any time. While you can ask us in your submission to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **VIII. Authority**

The Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act), Public Law 116-180 dated October 21, 2020.

**Bryan Newland,**

*Assistant Secretary – Indian Affairs.*

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